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Supreme Court of the United States

OCTOBER TERM, 1982

SPRINGFIELD TOWNSHIP SCHOOL DISTRICT,
A POLITICAL SUBDIVISION OF THE
COMMONWEALTH OF PENNSYLVANIA, ET AL.,
Petitioners,

v.

MADELIN H. KNOLL,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF OF THE STATE OF MARYLAND AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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BRIEF OF THE STATE OF MARYLAND AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

The State of Maryland, by its Attorney General, submits this brief amicus curiae in support of Springfield Township School District's petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in

Knoll v. Springfield Township School District, 699 F.2d 137 (3rd Cir. 1983).

INTEREST OF AMICUS CURIAE

In this case involving a state employee's employment dispute brought in federal court pursuant to 42 U.S.C. §1983, the court below refused to apply the six month statute of limitations which it conceded the state court would have applied. Since a number of states have a statute of limitations of less than one year that could be applied in federal civil rights actions, see Petition for Writ of Certiorari at 11, n. 13, this holding, if left undisturbed, will clearly have a far reaching impact.

The State of Maryland not only has several statutes and regulations containing such an abbreviated limitations period, Md.

Code Article 49B §9A (Employment Discrimination Complaints) and Article 64A §33 and §§52-54 (State Employees Discharges and Grievances); COMAR .06.01.01.60-61 but it also has a number of other statutes which require that public employees' employment disputes be promptly resolved. See e.g., Md. Code Article 27 §§721 and 734 (Law Enforcement Officers); Education Article §6-202 (Teachers and Principals); §13-1A-01 et seq (University of Maryland Employees), §14-110 (Board of Trustees of State Universities and College Employees).

Moreover, well established in the common law of Maryland and other states and indeed this Court, is a requirement that a public employee assert his employment dispute in court in an expeditious fashion. See Duffey v. Rickard, 194 Md. 228, 71 A.2d. 41 (1950) and case cited therein. Pending before the Court of Appeals of the Fourth Circuit at

this time is a case from Maryland relying on these statutes, regulations and common law which raise many of the issues involved in this case at hand. Grattan v. Burnett, No. 82-1924 (4th Cir. Argued March 10, 1983).

Accordingly, if the decision below is allowed to stand,[1/] it could mean that Maryland's clear and pervasive state policy of prompt resolution of public employment disputes evidenced by statutes, regulations and the case law could be thwarted each and every time such cases are brought in federal court. For this reason, the State of Maryland has a very special interest in the resolution of this case.

[1/] The Third Circuit, relying on the case at hand, has recently refused to apply the six month limitations period in a §1983 prisoner's suit, see Swyka v. Johnson, 699 F.2d. 675 (3rd. Cir. 1983), petition for cert filed, No. 82-1928 (May 19, 1983) even though those judges dissenting from the denial of rehearing en banc, here noted that even if the panel's decision was correct that this case could not practically be brought within six months, "a prisoner alleging that the warden improperly deprived him of some property" surely could bring suit within this period. 699 F.2d. at 147.

REASONS FOR GRANTING REVIEW

I

This Court Should Review The Lower Court's Refusal To Adopt The Statute Of Limitations Which It Conceded Would Have Been Applied By The State Courts Since This Holding Is Based On Reasons Contrary To The Teachings Of This Court

Since Congress "did not establish a statute of limitations" for actions brought under 42 U.S.C. §1983, federal courts are generally to borrow the "state statute of limitations governing an analogous cause of action." Board of Regents of the University of the State of New York v. Tomanio, 446 U.S. 478, 484 (1980) (hereafter "Tomanio"). See also, Johnson v. Railway Express Agency, Inc., 421 U.S. 454, 462 (1975). In most cases the most analogous state statute of limitations is the "binding rule of law" in §1983 actions, which can be disregarded only if "inconsistent with the Constitution and

laws of the United States." Tomanio, supra, 446 U.S. at 484-5. In order to "gauge inconsistency," a court must identify and compare the "federal and state policies which the respective legislatures sought to foster." Tomanio, supra, 446 U.S. at 487.

While the court below purported to recognize these principles as controlling, in fact it failed to follow them and so reached a result clearly at odds with the teachings of this Court. The lower court specifically held that Pennsylvania's six month statute of limitations would have been applied if this case had been brought in state court, i.e. that statute was the "most analogous." It refused to apply the Pennsylvania statute because it found application of that statute would contravene the remedial purpose of federal civil rights actions and "deny appellant the breadth of §1983's sweep." However, in reaching this conclusion, it

totally failed to engage in the identification and comparison of the competing state and federal policies as this Court mandated in Tomanio.

First, the Third Circuit simply ignored what this Court has "emphasized" are the important policies "underlying state statutes of limitations." Tomanio, supra, 446 U.S. at 487. These policies are of particular importance in this case involving, as it does, the legitimate and long-recognized state requirement that its employees promptly assert and resolve employment disputes. Yet there is not a single word in the lower court's decision indicating it gave weight to any state policies in making its determination to reject the most analogous state statute of limitations.

Moreover, as the four circuit court judges who dissented from the denial of rehearing en banc noted, "while the lower

court did describe the general federal policy behind §1983" it never explained "with any precision, why the six month period could not be squared with these policies." Knoll v. Springfield Township School District, supra, 699 F.2d. at 147. "Much of the reasoning" the lower court employed in rejecting the six month period, "could equally be applied to strike down any limitations period for any such period arguably circumscribes the broad sweep of Section 1983." Ibid.

Lest there be any doubt that those principles ennunciated by this Court in Tomanio are still good law, this Court's most recent statute of limitations case reiterates them, albeit in a different context. See Del Costello v. International Brotherhood of Teamsters, and United Steelworkers of America, AFL-CIO-CLC v. Flowers, 51 U.S.L.W. 4693 (June 8, 1983) (hereafter "Del Costello"). This consolidated case involved

disputes between an employee and his union (as well as his employer); no federal statute of limitations was expressly applicable. In determining what limitations period to apply, the Court expressly recognized that generally courts are to apply "the most closely analogous statute of limitations under state law." Del Costello, supra, 51 U.S.L.W. at 4695. It was only because in these cases the Court found "no close analogy in state law," id. at 4697, that it determined to apply a federal statute of limitations. The federal statute which the Court applied, established a six month limitations period; in one of the cases it was applied in preference to a three year state statute of limitations. Id. at 4698.

This Court has thus, only days ago, expressly recognized that application of a "short" statute of limitations is not

necessarily "bad". The Third Circuit's holding to the contrary should be reviewed and then reversed.

II.

The Deep Division Among The Lower Courts In This Area Which Resulted In The Unsanctioned Holding Below Should Be Resolved By This Court

The Court below, in refusing to apply the most clearly analagous six month statute of limitations in a federal civil rights action ignored conflicting decisions in two other circuits.

In Burns v. Sullivan, 619 F.2d. 99, 106-107 (1st Cir.), cert. denied, 449 U.S. 893 (1980), the First Circuit held that a six month limitation is reasonable in §1983 cases. The Court expressly rejected the theory that such a statute of limitations was too short emphasizing the "important policy reasons" which supported the use of a short

limitations period in state court. The First Circuit has consistently followed Burns. See e.g., Holden v. Massachusetts Commission Against Discrimination, 671 F.2d. 30 (1st Cir.), cert. denied, 103 S.Ct. 97 (1982) and most recently in Gashgai v. Leibowitz, 703 F.2d. 10, 12 (1st Cir. 1983).

The Eighth Circuit in Warren v. Norman Realty Company, 513 F.2d. 730, 733-35 (8th Cir. 1975), cert. denied, 423 U.S. 855 and Green v. Ten Eyck, 572 F.2d. 1233 (8th Cir. 1978) applied a 180 day state statute of limitations to actions brought under §1982. But see Chambers v. Omaha Public School District, 536 F.2d. 222 (8th Cir. 1976).[2/]

[2/] In fact, Chambers is the only case other than the one at hand in which a Court of Appeals has refused to employ a short state statute of limitations in an employment dispute involving a public employee. However, Chambers is distinguishable from the case at hand in several respects. First, the court there paid no attention to the fact that Chambers was a public employee and so there was no acknowledgement of particular significant state interest in this area. See infra, §III. Perhaps even more significantly, the Chambers court based its holding, at least in part, on the (continued)

Aside from the conflict that the holding below presents with the First and Eighth Circuit decisions, its reasoning conflicts with the reasoning of most of those courts of appeals who have refused to apply short state statutes of limitations in employment disputes. See McNutt v. Duke Precision Dental and Orthodontic Laboratories, Inc., 698 F.2d. 676 (4th Cir. 1983); Zuniga v. AMFAC Foods, Inc., 580 F.2d. 380 (10th Cir. 1978); Mason v. Owens - Illinois, Inc., 517 F.2d. 520 (6th Cir. 1975); Waters v. Wisconsin Steelworkers of International Harvester Co., 427 F.2d. 476 (7th Cir.), cert. denied, 400 U.S. 911 (1970). Each of these cases, like the decision below, rejected a short state statute of limitations. However, unlike the court

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fact that application of a short statute of limitations in that case would have barred the plaintiff's First Amendment claim. 536 F.2d. at 227. Here, of course, there is no contention that any First Amendment claim is barred by the statute of limitations.

below, the other courts rejected a short state statute of limitations not because it was "too short," but because it was not "the most clearly analagous" available state statute of limitations.[3/]

Indeed, even those cases upon which the court below relied, Childers v. Independent School District, 676 F.2d. 1338, 1343 (10th Cir. 1982) quoting Shouse v. Pierce County, 559 F.2d. 1142, 1146 (9th Cir. 1977), involve a court's rejection of a state limitations period for administrative, rather than judicial actions. Because of this, they are easily distinguishable from the case at hand where the federal court was asked to accept a limitations period which was clearly applicable to judicial proceedings.

3/ Frequently, this was because the state statute of limitations was upon initiation of state administrative proceedings and so was, for this reason, held inapplicable "to a judicial action." See e.g., McNutt v. Duke Precision Dental and Orthodontic Laboratories, Inc., supra, 698 F.2d. at 678.

While not relied upon by the Court below, there is language in one recent decision which does support its holding. See Garmon v. Foust, 668 F.2d. 400, 406 (8th Cir.), cert. denied, 102 S.Ct. 2283 (1982) ("we . . . reject the tort analogy because it unduly cramps the significance of Section 1983 as a broad statutory remedy.") Of course Garmon v. Foust, supra, a civil rights action against police officers, did not involve the established public policy in favor of resolving employment disputes of public employees expeditiously as the case at hand does. Moreover, in that case, since the police officers did not raise it, the Court specifically reserved the question of whether a state statute which required any person claiming damages against a municipality to commence the action within six months should be applied. Id. 668 F.2d. at 405 n. 9. Compare Swyka v. Johnson, supra, 669 F.2d. 675.

The other cases which generally support the lower court's holding come from the Tenth Circuit, which has indicated, in dicta, that if a substantial question exists as to which state statute applies, it will apply the "more generous" limitation period as a matter of policy. See e.g. Shah v. Halliburton, 627 F.2d. 1055, 1059 (10th Cir. 1980). However, the Tenth Circuit has recently disavowed that position. Garcia v. University of Kansas, 707 F.2d. 849 (10th Cir. 1983).

In summary, the Circuits are clearly divided in this area; some applying short statutes of limitations in federal civil rights actions, some expressly refusing to do so, most at least attempting to apply the most nearly analogous limitations period, but a few, the court below among them, refusing even to do this. Certiorari should be granted so that this important public policy question, which effects so many states can be definitively resolved.

III.

If The Lower Court Decision Is Allowed To Stand, It Will Undermine The Legitimate And Long-Recognized State Policy Of Prompt Assertion and Prompt Resolution Of Employee Disputes

Although the Pennsylvania statute of limitations rejected by the lower court is less than a decade old, it reflects a policy grounded in nearly a century of common law. The policy that the employment disputes of public employees be promptly asserted and promptly resolved is also one that has been endorsed by this Court and is mirrored in numerous federal statutes.

It is noteworthy that this rule was first ennunciated in cases involving mandamus -- the closest state analogue to an action under 42 U.S.C. §1983.[4/] Mandamus, like

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[4/] The Writ of Mandamus, like §1983, has as its purpose to remedy the abuse of governmental power, particularly illegal and unconstitutional action. In Maryland, at least since the middle of the 19th century, mandamus has served as a remedy for a public officer to challenge his ouster and (continued)

§1983, carries with it no specific statute of limitations. The timing of actions is governed by the equitable doctrine of laches. United States ex rel. Arant v. Lane, 249 U.S. 367, 372 (1919). Although the question of laches has traditionally been a heavily factual inquiry, when a public employee brings a mandamus actions against his employer, the issue has strong public policy overtones. For example, in Williams v. Livingston Parish School Board, 191 So. 143 (La.App. 1939), one state court said:

> "Sound public policy requires that an employee of a public body who claims to have been illegally discharged should press his claim for reinstatement with diligency and without unnecessary delay. The rule that laches on the part of such employee will bar his claim for reinstatement is not based on any law of prescription or limitation of public policy. The processes of government must go on and employees

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regain his position. It is an action at law which like, 42 U.S.C. §1983, offers a damage remedy, Maryland Rule BE44, ancillary injunctive relief, Maryland Rule BF, and the right to a jury trial. Md. Code, Courts and Judicial Proceedings Article, §3-8A-02.

> who are officials must be paid out of public revenue for carrying on the functions of government." Id. at 144.

See Annot.: Acquiescence or Delay as Affecting Rights of Public Employee Illegally Discharged, Suspended or Transferred, 145 ALR 767 (1943), which collects more than 100 cases on the subject -- some going as far back as 1879 and some involving the application of delays of only four months.

More than 60 years ago, this Court recognized the wisdom of this policy:

> "When a public official is unlawfully removed from office, whether from disregard of the law by his superior or from mistake as to the facts of his case, obvious considerations of public policy make it of first importance that he should promptly take the action requisite to effectively assert his rights, to the end that if his contention be justified the Government service may be disturbed as little as possible and that two salaries shall not be paid for a single service."

United States ex rel. Arant v. Lane, 249 U.S. 367, 372 (1919). Similarly, in Nicholas v. United States, 257 U.S. 71, 75 (1921), this Court said:

> "[A] person illegally dismissed from office is not thereby exonerated from obligation to take steps for his own protection and may not for an unreasonable length of time acquiesce in the order of removal, which it was within the power of the Secretary to make, and then recover for the salary attached to the position. In cases of unreasonable delay he may be held to have abandoned title to the office and any right to recover its emoluments."

See also Norris v. United States, 257 U.S. 77 (1921) (Relief denied to a federal employee who waited 11 months before bringing an action against his employer.)[5/]

In most jurisdictions, the mandamus remedy for public employee disputes has been supplanted by specific statutory grievance procedures that ordinarily apply to all types of complaints involving the terms and conditions of employment, including discharge

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[5/] The rule of these old cases is reflected in more recent precedent. See e.g. Zuckert v. Peterson, 321 F.2d. 748 (D.C. 1963), cert. denied, 375 U.S. 971 (1964); Jones v. Summerfield, 265 F.2d. 124 (D.C. 1959), cert. denied, 361 U.S. 841 (1959). The Maryland rule was articulated in 1950. See Duffey v. Rickard, 194 Md. 228, 71 A.2d. 41 (1950) (Finding laches in a 5 month delay).

and failure to promote. For example, Maryland law sets up a schedule under which a classified employee has 165 days to challenge a termination or other type of grievance action. See Md. Code, Article 64A, §33 and §54; Md. Rules of Procedure B4.[6/] And the very same policy of expeditious assertion and resolution of public employee cases is found in a host of other Maryland statutes governing specific classes of employees. See supra at 3.

The states are not alone in recognizing the wisdom of such a policy. Employment discrimination complaints under Title VII of the Federal Civil Rights Act, 42 U.S.C. §2000e, et seq, must be filed within 180

[6/] In Grattan v. Brunett, No. 82-1924, U.S. (4th Cir. Argued March 10, 1983), the State of Maryland is contending, inter alia, that either these statutes or the common law rule of Duffey v. Rickard, 194 Md. 228, 71 A.2d. 41 (1950), should supply the limitations period in §1983 public employee limitation cases.

days. Similarly, unfair labor practice complaints under the National Labor Relations Act must be filed within 6 months. 29 U.S.C. §160(b). See Del Costello v. Teamsters, 51 L.W. 4393 (June 8, 1983). And Congress has adopted an elaborate system to resolve federal employment disputes "at the earliest practicable date." See 5 U.S.C. §7503(b)(4) and §7513(b)(4); Bush v. Lucas, 51 U.S.L.W. 4752 (June 13, 1983).

In short, there exists both in the common law and state and federal statutes a pervasive and long-recognized policy of requiring a prompt start and a swift end to public employee disputes and litigation to the end that the provisions of vital government services not be disrupted for prolonged periods by employer-employee acrimony.

In light of this history, it is surprising that the lower court refused to

conclude that Congress would permit private employment discrimination disputes and public employee cases to be treated differently under the 1871 Civil Rights Act. Certainly, this view is not shared in other federal circuits. See e.g. McNutt v. Duke Precision Dental & Orthodontics Laboratories, Inc., 698 F.2d. 676 (4th Cir. 1983), where the Court of Appeals for the Fourth Circuit said that as a policy matter a shorter period of limitations for controversion over discharge, demotions, and failure to promote or transfer may have virtue "particularly when the plaintiff is a public employee." Id. at 678.

Moreover, this Court has recognized the special relationship existing between a public employer and its employees, see e.g. National League of Cities v. Usery, 426 U.S. 833 (1978), and has not hesitated to treat government employees differently from private employees for purposes of the assertion of

discrimination complaints, see Brown v. General Services Administration, 425 U.S. 820 (1976), and constitutional claims, see Bush v. Lucas, 51 U.S.L.W. 4752 (June 13, 1983).

To assert, as has the Court of Appeals for the Third Circuit, that Congress could not have intended discrimination claims against a private employee under 42 U.S.C. §1981 to be treated differently than those lodged against a public employee under 42 U.S.C. §1983 is to ignore the very real difference in those federal statutes. In §1983, Congress has elected to afford plaintiffs a "unique" remedy for the abuse of state power, Mitchum v. Foster, 407 U.S. 225, 239 (1972). However it is also a remedy crafted with a careful eye toward a state's Eleventh Amendment immunity, see Quern v. Jordan, 435 U.S. 904 (1978) and the assertion of official immunity, see Harlow v. Fitzgerald, _____ U.S. _____, 102 S.Ct. 2727

(1982), to name just a few considerations not present in a private employment discrimination case under 42 U.S.C. §1981.

In summary, through the common law and statutes, special considerations have been given to the prompt assertion and resolution of public employee disputes -- considerations the Third Circuit was not free to ignore in fashioning its unsupported view of the wisdom of Pennsylvania's six month statute of limitations.

CONCLUSION

For all of these reasons, Maryland asserts that this case presents issues of great importance to the states. We urge that review be granted and that this Court examine and revise the decision of the Court of Appeals for the Third Circuit.

Respectfully submitted,

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